

February 7, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: Notice of *Ex Parte* presentation in: WT Docket Nos. 10-4, 11-49, 12-268,
12-269, 12-354

Dear Ms. Dortch:

On February 5, 2013 Harold Feld, Senior VP, Public Knowledge (PK), met with Renee Gregory, Legal Advisor to Chairman Genachowski, with regard to the above captioned matters.

With regard to Docket No. 10-4 (Boosters), PK stated that the **2 million** consumers who legally purchased boosters in good faith should not bear the burden of registration going forward – especially in the absence of any evidence of interference. This is particularly unjust in light of the Commission’s previous determination to grandfather over a million illegally marketed wireless microphones, and grandfather users and uses that in no way even remotely complied with the existing rules. Under what theory is it just, reasonable and non-arbitrary for the FCC to fully pardon Broadway theaters and karaoke bars, but to impose new burdens on rural users and others who purchased lawfully marketed devices, and who rely upon these devices not for karaoke, but for vital communication services? Given that the licensees have demonstrated no likelihood of harmful interference from legacy devices, and retain authority to require such devices to cease operation in the event of actual interference, the Commission should refrain from punishing law-abiding consumers whose sole offense is that their carrier provides such poor coverage that they legally bought a wireless booster.

Similarly, with regard to remaining inventory, the Commission should allow a reasonable time for merchants to clear their existing inventory and for manufacturers to convert to the new safe-harbor standards. Again, the absence of evidence of widespread interference issues, coupled with the fact that the devices were legally manufactured and sold in accordance with the Commission's rules (as understood at the time), argues for a reasonable transition period that will not impose significant costs on either merchants or manufacturers. Accordingly, the Commission should allow a full year, rather than merely 6 months, for manufacturers to clear existing inventory.

With regard to carrier consent, PK as long noted that the Commission possesses more than adequate authority pursuant to both Title II and Title III to require licensees to consent to the use of multi-band boosters, and the Commission should do so here. If the Commission determines to require provider consent, it must make clear that such consent cannot be unreasonably withheld, and that denial of consent to any unit that meets the safe harbor technical standards would be unreasonable pursuant to Section 201(b) and a violation of service rules established pursuant to

Section 303. The Commission should establish a mechanism by which consumers and/or manufacturers can file complaints when consent is unreasonably denied.

With regard to docket No. 11-49 (Progeny waiver request), PK urged that the full Commission issue a public notice to define the term “unacceptable levels of interference” as used in the relevant regulation, and should define specific tests to determine whether the proposed use does or does not cause unacceptable levels of interference. After receiving public notice, the full Commission should then approve a certification process adopting a definition and testing procedures.

Anything else is unfair both to Progeny and other users of the spectrum. Instead of reasoned decisionmaking, the debate continues in a vacuum, with parties left to decide for themselves what constitutes appropriate testing and what are the relevant metrics. This invites parties to rely on political pressure and to simply reject criteria proposed by opponents as either insufficient or unduly restrictive. This is not merely detrimental to the existing proceeding, it discourages all subsequent innovators by demonstrating that the Commission’s processes for evaluating new uses of spectrum are an endless quagmire with no pathway out and where untold hordes of incumbents wait to drown new entrants in a deluge of testing.

WRT 12-268 (incentive auctions), PK urged the Commission to consider the advantages of the lead band plan with regard to repacking. Because there will be limited space in the UHF bands available under the plan favored by the NAB and the wireless carriers, repacking broadcasters will be extremely expensive and potentially disruptive to both existing secondary licensees and unlicensed users. By contrast, the ability to put full power broadcasters in the UHF channels between the uplink and the downlink will alleviate crowding problems for surviving full power broadcasters.

WRT 12-268 and 12-269 (spectrum aggregation), PK noted that the screen is not a hard cap, and therefore is not, nor was it ever intended to be, a safe harbor. To avoid conflict with the spectrum legislation, the Commission should make clear that, for purposes of the auction, it will regard the screen as a “rule of general applicability” and that carriers that exceed the screen as a result of the auction will be required to relinquish other licenses to come into compliance. PK supported additional limits on spectrum below 1 GHz, in light of the value of the spectrum for competitive purposes.

By contrast, PK repeated the position it had taken in the recently denied Petition for Reconsideration in the Sprint/Clearwire Transaction that BRS and EBRS spectrum should not count at all for the screen, given the poor propagation qualities of the spectrum in question. If the Commission does continue to include BRS spectrum, the Commission should have a sliding scale, in which it sets the strictest limits on spectrum below 1 GHz, followed by lesser restrictions on spectrum between 1 GHz and 2 GHz, followed by lesser restrictions on spectrum above 2 GHz.

The Commission should clarify that the screen applies to all auctions, as well as to transactions, including the upcoming H Block auction.

With regard to Docket No. 12-354, PK urged the Commission to avoid unduly complicated rules and to “keep it simple.” The tremendous utility of the current unlicensed underlay regime lies in the fact that it has simple, straightforward rules that make it easy to develop devices and uses, leading in turn to network effects and economies of scale. While a database approach may accommodate many possible rules, an overly complicated set of rules will discourage investment and deployment. Particularly at this early stage of development, the Commission should adopt simple rules that encourage flexibility and utility.

In accordance with the FCC’s *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

_____/s/_____
Harold Feld
Legal Director
Public Knowledge

CC: Renee Gregory